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Angkasa Tiram Sdn Bhd v True Landing Sdn Bhd

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HIGH COURT (IPOH) — CIVIL SUIT NO AA-22NCVC-5-01 OF 2019
SU TIANG JOO JC
19 AUGUST 2021

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Civil Procedure — Pleadings — Necessity for express pleadings — Whether the defendant's defence was a bare denial — Whether defendant could raise affirmative case that plaintiff's claim was private dealing — Whether the defendant had expressly pleaded its case

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Trust and Trustees — Resulting trust — Purchase of land in name of another — Plaintiff contributed to acquisition price of properties — Whether there was a resulting trust in favour of the plaintiff

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The plaintiff claimed to be entitled to half share or 50% in six pieces of property ('the said lands') registered under the name of the defendant. The said lands were formerly owned by the Perak State Development Corporation and registered under the name of one of its companies, Tenaga Danawa Sdn Bhd ('Tenaga Danawa'). The defendant acquired the said lands from Tenaga Danawa for a total price of RM3,082,561.10. In or around November 2003,

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Koo Kim Choy ('Koo') and Ong Seng Tee were directors and shareholders in both the defendant and Kuala Jati Sdn Bhd ('Kuala Jati'). Although the defendant and Kuala Jati were two separate companies, for the purposes of the acquisition of the said lands, they had a private agreement between them that they were to be treated as one. The plaintiff alleged that sometime towards the

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end of 2003, the plaintiff entered into an oral agreement with the defendant to purchase half of the said lands then described as Zone A1 and Zone A2, Mukim Sg Raya, Daerah Kinta which the defendant would be acquiring from Tenaga Danawa. Pursuant to the oral agreement, the plaintiff was required to pay half of the purchase consideration. The purchase consideration would be about

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RM3m. The plaintiffs portion would be approximately RM1.5m ('the plaintiff's portion'). Upon payment of the plaintiff's portion, the plaintiff would then be deemed to own half share of the said lands ('the half share'). Upon the transfer of the said lands by Tenaga Danawa to the defendant, the defendant would hold the half share on trust for the plaintiff and the defendant

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would subsequently transfer the half share to the plaintiff free from encumbrances at the plaintiff's cost and expense ('the oral agreement'). The plaintiff asserted that it paid the plaintiff's portion but the defendant refused to transfer the half share to the plaintiff. The issues that called for determination by the court were: (a) whether the defendant could raise an affirmative case that

the plaintiff's claim was a private dealing with Koo and which had nothing to do with the defendant; (b) whether there was an oral agreement and if so, had the plaintiff performed its part in whole or in part; (c) whether the plaintiff had contributed towards the acquisition price for the said lands and if so, would the plaintiff be entitled to any relief; and (d) whether limitation and laches operated to bar the plaintiff from any relief.

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Held, allowing plaintiff's claim in part with costs:

- (1) It was clear that the defendant had pleaded that the payments made to Koo was a private deal or matter between Koo personally with the plaintiff and/or PW1 and which had nothing to do with the defendant and to which it was not bound. The defendant was entitled to lead evidence on the issue and sought to extract evidence favourable to its case during the plaintiff's case and any evidence extracted could be relied upon by it to destroy the plaintiff's case and to support its defence. The objection by the plaintiff had no merit (see paras 19–20 & 22).
- (2) The court accepted that there were payments made to Koo. However, there was no direct evidence led that connected the payments made to Koo to them being paid by the plaintiff to the defendant. The payments by the plaintiff to Koo by itself did not drive the court to inexorably conclude that there was an oral agreement. Although the defendant tried to make much about the payments having not come solely from the plaintiff itself but through PW1, PW2 and Semangat Hati Sdn Bhd, it was unmeritorious. It was a fundamental principle that unless it appeared from the nature of the case that any contract should be performed by the promisor himself, the promisor or his representatives might employ another to perform it and in the purchase of property both moveable and immovable it was common for a purchaser to effect payment of money through a competent third party such as a bank or a third party. The plaintiff failed to discharge its legal burden to prove on a balance of probability that the payments made to Koo were meant for the defendant and in fact had been utilised towards the acquisition price of the said lands and in consequence, that the plaintiff had failed to prove there was such an oral agreement to the extent (see paras 29, 31 & 40).
- (3) No evidence was led by the defendant to discharge the evidential burden which shifted to it so as to rebut the rebuttable presumption that arose driving the court inexorably to the conclusion that the defendant had benefitted therefrom in its acquisition of the said lands from Tenaga Danawa. With the plaintiff not intending to make the payment of RM1,169,025 gratuitously or as a gift, the plaintiff had an interest in the said lands. The evidence led did not establish a loan but instead that of the plaintiff seeking to purchase the said lands and had contributed towards the acquisition price for that purpose. Sitting as a court of equity,

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- A where the court could mould the relief that is to be granted premised upon the particular facts of the case, the court held that there was a resulting trust in favour of the plaintiff to the extent of the RM1,169,025 out of the acquisition price of RM3,230,000 which worked out to be 32.3% undivided share in the said lands. The plaintiff had led sufficient evidence to prove by reason of the payments it had made to Tenaga Danawa and the RM200,000 paid to the defendant's solicitors, a resulting trust to the extent of such contribution arose (see paras 50–51 & 53).
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- C (4) Even if it could be said that limitation would have accrued since the last payment to Tenaga Danawa being on 25 August 2005 that a period of some 14 years had passed before the action was filed but with the court having held that there was a resulting trust to the extent of 32.3% of the said lands in favour of the plaintiff, the recovery of such trust property from the defendant trustee would not be caught by limitation pursuant to s 22(1)(b) of the Limitation Act 1953 (Revised 1981). As for the defence of laches, no evidence was led by the defendant as to how it would be prejudiced. No evidence was led to show that the plaintiff had acquiesced to the defendant's denial of its claim, that its position had changed or that any third party interest was affected (see paras 56–57).
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[Bahasa Malaysia summary]

- F Plaintiff menuntut untuk mendapatkan hak setengah bahagian atau 50% dalam enam bahagian hartanah ('tanah tersebut') yang didaftarkan atas nama defendan. Tanah tersebut sebelumnya dimiliki oleh Perbadanan Kemajuan Negeri Perak dan didaftarkan atas nama salah satu syarikatnya, Tenaga Danawa Sdn Bhd ('Tenaga Danawa'). Defendan memperoleh tanah tersebut dari Tenaga Danawa dengan harga keseluruhan RM3,082,561.10. Pada atau sekitar November 2003, Koo Kim Choy ('Koo') dan Ong Seng Tee adalah pengarah dan pemegang saham kedua-dua defendan dan Kuala Jati Sdn Bhd ('Kuala Jati'). Walaupun defendan dan Kuala Jati adalah merupakan dua syarikat berbeza, untuk tujuan pengambilalihan tanah tersebut, mereka mempunyai perjanjian persendirian di antara mereka bahawa mereka harus diambilkira sebagai satu. Plaintiff mendakwa bahawa menjelang akhir tahun 2003, plaintiff telah memasuki satu perjanjian lisan dengan defendan untuk membeli setengah bahagian tanah tersebut yang kemudiannya dinyatakan sebagai Zon A1 dan Zon A2, Mukim Sg. Raya, Daerah Kinta yang mana akan diambilalih oleh defendan dari Tenaga Danawa. Berdasarkan perjanjian lisan tersebut, plaintiff harus membayar separuh daripada balasan belian. Balasan belian adalah sekitar RM3 juta. Bahagian plaintiff adalah kira-kira RM1.5 juta ('bahagian plaintiff'). Setelah membayar bahagian plaintiff, maka plaintiff akan dianggap memiliki setengah bahagian tanah tersebut ('setengah bahagian'). Setelah pindahmilik tanah tersebut oleh Tenaga Danawa kepada defendan, defendan akan memegang setengah bahagian atas amanah bagi plaintiff dan
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defendan kemudiannya akan memindahmilik setengah bahagian tersebut kepada plaintif bebas dari bebanan dengan kos dan perbelanjaan plaintif ('perjanjian lisan tersebut'). Plaintif menegaskan bahawa ia telah membayar bahagian plaintif tetapi defendan enggan memindahmilik setengah bahagian tersebut kepada plaintif. Isu-isu untuk ditentukan oleh mahkamah adalah: (a) sama ada defendan dapat mengemukakan kes mengiyakan bahawa tuntutan plaintif adalah urusan persendirian dengan Koo dan yang tidak ada kaitan dengan defendan; (b) sama ada terdapat perjanjian lisan dan sekiranya ya, adakah plaintif telah melaksanakan tanggungjawabnya secara keseluruhan atau sebahagian; (c) sama ada plaintif telah meyumbang terhadap harga pengambilalihan tanah tersebut dan sekiranya ya, adakah plaintif berhak mendapatkan apa-apa relif; dan (d) sama ada had dan laches terpakai bagi melarang plaintif dari apa-apa relif.

Diputuskan, membenarkan sebahagian tuntutan plaintif dengan kos:

- (1) Ia adalah jelas bahawa defendan telah memplidkan pembayaran telah dibuat kepada Koo adalah urusan persendirian atau perkara antara Koo secara peribadi dengan plaintif dan/atau PW1 dan yang tidak ada kaitannya dengan defendan dan bahawa ianya tidak mengikat. Defendan berhak untuk membawa keterangan mengenai isu ini dan berusaha untuk mengemukakan keterangan yang berpihak kepada kesnya semasa kes plaintif dan setiap keterangan yang dikemukakan harus digunapakai olehnya untuk menggugat kes plaintif dan untuk menyokong pembelaannya. Bantahan oleh pihak plaintif tidak ada merit (lihat perenggan 19–20 & 22).
- (2) Mahkamah menerima bahawa terdapat pembayaran yang dibuat kepada Koo. Namun, tidak ada keterangan secara langsung yang mengaitkan bahawa pembayaran yang dibuat kepada Koo kepada mereka dibayar oleh plaintif dengan defendan. Pembayaran yang dibuat oleh plaintif kepada Koo dengan sendirinya tidak mendorong mahkamah untuk membuat kesimpulan bahawa wujudnya perjanjian lisan. Walaupun defendan cuba menjelaskan sedaya upaya bahawa pembayaran tersebut bukan hanya datang dari pihak plaintif sendiri tetapi melalui PW1, PW2 dan Semangat Hati Sdn Bhd, namun ianya tanpa merit. Ianya adalah prinsip asas bahawa melainkan sekiranya ia nampak pada sifat kes bahawa sebarang kontrak harus dilaksanakan oleh pembuat janji sendiri, pembuat janji atau wakilnya mungkin boleh menggunakan pihak lain untuk melaksanakannya dan dalam pembelian hartanah yang boleh dialihkan dan yang tidak boleh dialihkan, ia adalah perkara biasa bagi pembeli untuk melakukan pembayaran wang melalui pihak ketiga yang kompeten seperti bank atau pihak ketiga. Plaintif gagal melepaskan beban perundangannya untuk membuktikan imbalan kebarangkalian bahawa pembayaran yang dibuat kepada Koo adalah untuk defendan dan sebenarnya telah digunakan ke arah harga pengambilalihan tanah

- A tersebut dan akibatnya, bahawa plaintif telah gagal membuktikan bahawa terdapat persetujuan lisan setakat itu (lihat perenggan 29, 31 & 40).
- B (3) Tidak ada keterangan yang dibawa oleh defendan untuk melepaskan beban pembuktian yang dialihkan kepadanya dalam menolak anggapan yang boleh dibantah yang berbangkit dalam mendorong mahkamah tanpa halangan pada kesimpulan bahawa defendan mendapat manfaat darinya melalui pengambilalihan tanah tersebut dari Tenaga Danawa. Dengan plaintif tidak berniat untuk membuat pembayaran sebanyak RM1,169,025 secara percuma atau sebagai hadiah, plaintif mempunyai kepentingan ke atas tanah tersebut. Keterangan yang dibawa tidak membuktikan suatu pinjaman sebaliknya pihak plaintif yang ingin membeli tanah tersebut dan telah menyumbang pada harga pengambilalihan untuk tujuan tersebut. Sebagai mahkamah ekuiti, di mana mahkamah dapat menetapkan relif yang akan diberikan berdasarkan fakta-fakta tertentu dari kes tersebut, mahkamah memutuskan bahawa terdapat amanah berbangkit bagi pihak plaintif sebanyak RM1,169,025 daripada harga pengambilalihan RM3,230,000 yang menjadi 32.3% bahagian yang tidak dipecahkan atas tanah tersebut. Plaintif telah membawa keterangan yang mencukupi untuk membuktikan dengan alasan pembayaran yang telah dibuatnya kepada Tenaga Danawa dan RM200,000 yang dibayar kepada peguamcara defendan, terdapat amanah berbangkit setakatmana sumbangan tersebut telah timbul (lihat perenggan 50–51 & 53).
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- F (4) Sekalipun ia dapat dikatakan bahawa had telah terakru sejak pembayaran terakhir kepada Tenaga Danawa pada 25 Ogos 2005 bahawa tempoh sekitar 14 tahun telah berlalu sebelum tindakan tersebut difailkan tetapi dengan mahkamah memutuskan bahawa terdapat amanah berbangkit sehingga 32.3% terhadap tanah tersebut bagi pihak plaintif,
- G pengambilan semula harta amanah tersebut dari pemegang amanah defendan tidak terhalang oleh had masa menurut s 22(1) (b) Akta Had Masa 1953 (Semakan 1981). Bagi pembelaan laches, tidak ada keterangan yang dibawa oleh defendan mengenai bagaimana tindakan tersebut akan memprejudiskan. Tidak ada keterangan yang dibawa
- H untuk menunjukkan bahawa plaintif telah bersetuju pada penafian defendan mengenai tuntutanannya, bahawa kedudukannya telah terjejas (lihat perenggan 56–57).]

Cases referred to

- I *Abda Airfreight Sdn Bhd v Sistem Penerbangan Malaysia Bhd* [2001] 3 MLJ 641, HC (refd)
Al-Faiha for Engineering Products v Ranhill Bhd [2019] 9 MLJ 553, HC (refd)
B (children), Re [2008] 4 All ER 1, HL (refd)
Cheong Heng Loong Goldsmiths (KL) Sdn Bhd & Anor v Capital Insurance Bhd

- and another appeal* [2004] 1 MLJ 353, CA (refd) A
- Eastern & Oriental Hotel (1951) Sdn Bhd v Ellarious George Fernandez & Anor* [1989] 1 MLJ 35; [1988] 1 CLJ Rep 50, SC (refd)
- Ho Hup Construction Co Bhd v Woo Thin Choy* [2016] 1 MLJ 709; [2015] 9 CLJ 706, CA (refd)
- Hong Yik Trading v Liziz Plantation Sdn Bhd* [2017] 5 MLJ 398; [2017] 8 CLJ 491, FC (refd) B
- Juahir bin Sadikon v Perbadanan Kemajuan Ekonomi Negeri Johor* [1996] 3 MLJ 627, CA (refd)
- Lai Hee Sang v Pun Hai Chin* [2016] 6 MLJ 434, CA (refd)
- Leo Leslie Armstrong (as the President and Committee of The Young Men's Christian Association of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (previously held by Majlis Mesyuarat Kerajaan Negeri Selangor)* [2015] 1 MLJ 255; [2015] 2 CLJ 10, CA (refd) C
- Mohammad Khair bin Hormat & Anor v Lakshmanan Krishnan* [2011] 5 MLJ 607, CA (refd) D
- Nyo Nyo Aye v Kevin Sathiaselan all Ramakrishnan & Anor* [2020] 4 MLJ 380; [2020] 5 CLJ 82, CA (refd)
- Quah Ooi Keat & Anor v Yew Phaik Hoon* [1966] 2 MLJ 208, FC (refd) E
- Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181; [2021] 3 CLJ 301, FC (refd)
- S Ashok Kandiah & Anor v Dato' Yalumallai @ Ramalingam s/o Muthusamy & Anor* [2010] MLJU 2218; [2011] 1 CLJ 460, CA (refd)
- Sinar Wang Sdn Bhd v Ng Kee Seng* [2005] 2 MLJ 42, CA (refd) F
- Takako Sakao (f) v Ng Pek Yuen (f) & Anor* [2009] 6 MLJ 751; [2010] 1 CLJ 381, FC (refd)
- Tan Hua Ling @ Tan Siew Leng & Ors v Tan Keng Yong @ Tan Keng Hong & Anor* [2020] 10 MLJ 651; [2020] 1 LNS 296, HC (refd)
- Tan Kim Khuan v Tan Kee Kiat (M) Sdn Bhd* [1998] 1 MLJ 697; [1998] 1 CLJ Supp 147, HC (folld) G
- Tan Sri Abdul Khalid bin Ibrahim v Bank Islam Malaysia Bhd and another suit* [2009] 6 MLJ 416; [2010] 4 CLJ 388, HC (refd)
- Teo Ah Bin @ Teo Eng Bin v Tan Kheng Guan* [2002] 3 MLJ 121, HC (refd)
- Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229; [1979] 1 LNS 119, FC (refd) H
- Wong Hon Leong David v Noorazman bin Adnan* [1995] 3 MLJ 283; [1995] 4 CLJ 155, CA (refd)

Legislation referred to I

Contracts Act 1950 s 41
 Evidence Act 1950 ss 103, 114(f)
 Limitation Act 1953 s 22(1)(b)
 National Land Code Form 14A

- A *CK Yeoh (KL Mah with him) (KS Su & Mah) for the plaintiff.*
KB Tan (KB Tan Kumar & Partners) for the defendant.

Su Tiang Joo JC:

B INTRODUCTION

- C [1] The plaintiff claimed to be entitled to half share or 50% in six pieces of property registered under the name of the defendant. After a trial, the court decided that by reason of the plaintiff having contributed 32.3% of the acquisition price of the properties, a resulting trust ensued and the plaintiff is entitled to 32.3% share. Both the plaintiff and the defendant are dissatisfied and have each appealed. These are the grounds for the decision made on 6 July 2021.

- D [2] The facts and evidence are well captured in the respective written submissions of the respective parties (encls 80, 83, 86, 89, 94, 98 and 100) and to reproduce the same would only add unnecessary length of these grounds.

- E [3] Wherefore, save for setting out the salient background facts to facilitate comprehension, the court will proceed to deal with the respective contentions made by the parties and explain the findings made by this court.

BACKGROUND FACTS

- F [4] At the heart of this action are six pieces of lands now held under issued documents of title known as: (i) HS (D) 184409 PT 21676; (ii) HS (D) 184410 PT 21677; (iii) HS (D) 184411 PT 21678; (iv) HS (D) 184412 PT 21679; (v) HS (D) 184413 PT 21680; and (vi) HS (D) 184414 PT 21681 all in Mukim Sungai Raya Daerah Kinta, Negeri Perak Darul Ridzuan measuring about 190 acres ('the said lands').

- H [5] The said lands were formerly owned by the Perak State Development Corp and registered under the name of one of its companies, Tenaga Danawa Sdn Bhd ('Tenaga Danawa').

- [6] The defendant acquired the said lands from Tenaga Danawa.

- I [7] The undisputed evidence shows that when all the acquisition prices for the six pieces of properties stated in six transfer forms or commonly referred to as Forms 14A (see Common Bundle of Documents 'B' pp 51–80) are added up, the total acquisition price came to a total sum of RM3,082,561.10 ('acquisition price').

[8] In or around November 2003, Koo Kim Choy ('Koo') and Ong Seng Tee were directors and shareholders in both the defendant and Kuala Jati Sdn Bhd ('Kuala Jati'). Although the defendant and Kuala Jati were two separate companies, for the purposes of the acquisition of the said lands they had a private agreement between them that they were to be treated as one.

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THE PLAINTIFF'S CASE

[9] In summary, the plaintiff's case is as follows:

- (a) sometime towards the end of 2003, around November or December 2003, the plaintiff entered into an oral agreement with the defendant to purchase half of the said lands then described as Zone A1 and Zone A2, Mukim Sg Raya, Daerah Kinta which the defendant would be acquiring from Tenaga Danawa;

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- (b) pursuant to the oral agreement:

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- (i) the plaintiff was required to pay half of the purchase consideration. The purchase consideration would be about RM3m. Thus, the plaintiff's portion would be approximately RM1.5m ('the plaintiff's portion');
- (ii) upon payment of the plaintiff's portion, the plaintiff would then be deemed to own half share of the said lands ('the half share'); and
- (iii) upon the transfer of the said lands by Tenaga Danawa to the defendant, the defendant would hold the half share on trust for the plaintiff; and
- (iv) the defendant would subsequently transfer the half share to the plaintiff free from encumbrances at the plaintiff's cost and expense.

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('the oral agreement').

[10] The plaintiff asserted that it paid the plaintiff's portion but the defendant refused to transfer the half share to the plaintiff.

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THE DEFENDANT'S CASE

[11] In summary, the defendant's case is as follows:

- (a) the defendant deny there was such an oral agreement;
- (b) save for a proposal in 2004 which never came to fruition, there was no official dealings between the plaintiff and the defendant involving the said lands;

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- A (c) any payments made by the plaintiff was pursuant to a private dealing made with a former director of the defendant by the name of Koo Kim Choy ('Koo'), in the latter's personal capacity with Koo having passed away on 27 April 2009 (see the death certificate in p 45 in Bundle of Additional Documents 'C');
- B (d) that the plaintiff's case is not inherently probable; and
- (e) in any event, the claim is stale with limitation having set in.

ISSUES

- C [12] The following issues call for determination by the court:
- (a) whether the defendant can raise an affirmative case that the plaintiff's claim was a private dealing with Koo and which has nothing to do with the defendant;
- D (b) whether there was the oral agreement and if so, has the plaintiff performed its part in whole or in part;
- (c) whether the plaintiff had contributed towards the acquisition price for the said lands and if so, would the plaintiff be entitled to any relief; and
- E (d) would limitation and laches operate to bar the plaintiff from any relief.

COURT'S ANALYSIS AND FINDINGS

- F *Pleading point*

- [13] The plaintiff asserted that as the defendant's had pleaded a mere denial and put the plaintiff to strict proof the defendant cannot be allowed to make out an affirmative case that the plaintiff's cause of action lay against Koo or his estate.
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- [14] During the trial, Mr CK Yeoh, learned counsel for the plaintiff took an objection with the defendant taking an affirmative case on the premise that because the defendant rest its case on a pleading of denial and/or lack of knowledge, the defendant at the trial is not entitled to put forward some affirmative case which it has not pleaded or alleged. Therefore, the defendant should not be entitled to put forward an affirmative case during cross examination. Mr Yeoh cited the Court of Appeal authority of *Cheong Heng Loong Goldsmiths (KL) Sdn Bhd & Anor v Capital Insurance Bhd and another appeal* [2004] 1 MLJ 353 where it was held that:
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[20] The respondent before us, in its statement of defence, denied liability and put the appellant to strict proof of its [claim] that there had been a robbery. There was no plea of an affirmative case, namely the breach of policy condition 6. It was

therefore manifestly not open at trial for the respondent to pursue an unpleaded affirmative case alleging a breach of condition 6 and to succeed on an unpleaded case. A

The following reported authorities were also cited in support of this point:

Gerard Jude Timothy Pereira v Kasi all KL Palaniappan [2017] 6 MLJ 54 at [25]–[27]. B

Gerard Jude Timothy Pereira v Kasi all KL Palaniappan [2015] MLJU 950 at [40]–[45].

[15] In response to this challenge made during the trial and in particular during the cross-examination of one of its directors and principal witness of the plaintiff (PW1), I made a ruling allowing Mr KB Tan, learned counsel for the defendant to proceed to cross-examine PW1 on what has been described by Mr Yeoh to be an affirmative case. However, I nevertheless, allowed the plaintiff to revisit this issue at the close of trial or in the event the defendant wanted to lead positive evidence to support the line of enquiry that the money paid to Koo was actually meant [for Koo] to repay the loan to Ong Seng Tee, a director and shareholder of the defendant. C D

[16] Learned counsel for the plaintiff revisited this issue in his written submissions (encl 80 para 26–29) and submitted that based upon the defendant's pleadings, the evidence extracted during the cross-examination of PW1 on Koo being in financial difficulties and that the money paid to Koo were in fact loans to Koo rather than an investment sum for the said lands by the plaintiff would be inadmissible as being irrelevant because this was not pleaded in defendant's defence. E F

[17] However, the defendant had pleaded in its defence (Bundle of Pleadings 'A' p 23 para 10) that it has no knowledge and does not admit to any representations purportedly made by Koo on its behalf to the plaintiff in regard to the said lands and that if there were any such representations, which was denied, it was a private deal or matter between Koo personally with the plaintiff and/or PW1 and which has nothing to do with the defendant and to which it is not bound. G H

[18] The defendant expressly pleaded (Bundle of Pleadings 'A' p 25 para 21) that the plaintiff's cause of action lies against Koo and/or Koo's estate as Koo had died on 27 April 2009 (see the death certificate in p 45 in Bundle of Additional Documents 'C'). I

[19] It is, therefore, clear that the defendant had pleaded that the payments made to Koo was a private deal or matter between Koo personally with the

A plaintiff and/or PW1 and which has nothing to do with the defendant and to which it is not bound.

B [20] By reason thereto, the defendant was entitled to lead evidence on this issue and seek to extract evidence favourable to its case during the plaintiff's case and any evidence extracted can be relied upon by it to destroy the plaintiff's case and to support its defence.

C [21] As submitted by Mr KB Tan, in a civil case, one party's evidence is the other's as well, see *S Ashok Kandiah & Anor v Dato' Yalumallai @ Ramalingam s/o Muthusamy & Anor* [2010] MLJU 2218; [2011] 1 CLJ 460 (CA). Further, a party can discharge the evidential burden cast upon him by way of 'cross-examination of witnesses of the party on whom the burden of proof lies or by calling witnesses or by giving evidence himself or by a combination of the different methods', see *Tan Kim Khuan v Tan Kee Kiat (M) Sdn Bhd* [1998] 1 MLJ 697; [1998] 1 CLJ Supp 147 HC as per Augustine Paul JC and quoted with approval in *Ho Hup Construction Co Bhd v Woo Thin Choy* [2016] 1 MLJ 709; [2015] 9 CLJ 706 (CA).

E [22] Wherefore, I am of the view that this objection by the plaintiff has no merit.

The oral agreement

F [23] The plaintiff's evidence was that:

- (a) sometime in November 2003, Koo informed PW1 about the defendant's negotiations to acquire the said lands from Perbadanan Kemajuan Negeri Perak ('PKNP') via Tenaga Danawa;
- G (b) as the defendant did not have sufficient funds to complete the land transaction, PW1 was invited to purchase a half share in the said lands through himself or his company. Payment for this half share would be made through payments to Tenaga Danawa as and when the same was requested by the latter;
- H (c) upon payment of the full purchase price, Tenaga Danawa would cause the transfer of the said lands to the defendant;
- (d) the defendant would then hold Half Share on trust for the plaintiff and subsequently transfer the same free from encumbrances to the plaintiff;
- I (e) in the course of negotiations, Koo took PW1 to the site. He also introduced the other director of the defendant, Ong Seng Tee, to him;
- (f) the following documents were also furnished:
 - (i) the sale and purchase agreements executed between Tenaga

- Danawa and the defendant and Kuala Jati dated 13 June 2002 and 29 July 2002 respectively; **A**
- (ii) the supplementary agreements dated 16 September 2002 executed between the above said parties; and
- (iii) the proposed development plans for the said land. **B**
- (g) that sometime at the end of 2003, and after the meeting in November 2003, Koo was said to have made the following offer:
- (i) the acquisition price of the said lands from Tenaga Danawa would be about RM3m, which would be payable in stages or instalments to Tenaga Danawa as and when requested by the latter; **C**
- (ii) if the plaintiff was prepared to contribute half of the acquisition price, ie the sum of about RM1.5m, the plaintiff would be considered as the purchaser of half of the lands; **D**
- (iii) once Tenaga Danawa caused the transfer of the said lands to the defendant, the latter would be holding half of the said lands for the plaintiff;
- (iv) thereafter, the defendant would transfer the plaintiff's half share of the said lands to the plaintiff free from encumbrances; **E**
- (v) that the offer was accepted by PW1 on behalf of the plaintiff;
- (vi) both PW1 and his wife (PW2) who is the other shareholder cum director of the plaintiff testified that the plaintiff has been making payments to Koo and Tenaga Danawa since December 2003. Most of the payment vouchers evidencing such payments were prepared by PW2; **F**
- (vii) that Koo and Tenaga Danawa signed and acknowledged receipt of the payments on the said payment vouchers. The payments and the payment vouchers were prepared by PW2 upon the instructions given by PW1. **G**
- (h) the following documentary evidence were tendered by the plaintiff:
- (i) the payment vouchers evidencing the payments made to Koo ('Koo's payment vouchers' in B pp 226–257); **H**
- (ii) the payment vouchers evidencing the payments made to Tenaga Danawa ('TD's payment vouchers' in B pp 259–269);
- (iii) the official receipts that were issued by Tenaga Danawa in respect of the payments made by the plaintiff on behalf of the defendant. These receipts issued in the name of the defendant (B pp 265 and 267), in the name of Kuala Jati (B pp 264 and 269) and in the joint names of the defendant and Kuala Jati (B pp 260 and 262) **I**

- A** confirmed that payments to Tenaga Danawa were made via cheques issued by the plaintiff;
- B** (iv) a list setting out a summary of the payments made to Koo ('Koo's summary') and Tenaga Danawa ('TD's summary') (B pp 225–226). Koo's summary provides details of the cheques issued by and/or on the plaintiff's behalf to Koo; and
- C** (v) PW2 also issued a letter dated 10 May 2011 to Tenaga Danawa (B p 211), requesting that the latter provide an acknowledgement of receipt of the cheques that were caused to be issued by the plaintiff on behalf of the defendant in respect of the purchase of the said lands.

- D** [24] Against the aforesaid, the plaintiff asserted that the existence of the oral agreement is corroborated by:
- (a) Koo having been paid RM532,200;
- (b) Koo's payment vouchers described the payments made as 'Advance for 190 acres of Mukim Sungai Terap; and
- E** (c) these documents were prepared before any dispute arose and therefore could not have been prepared in anticipation of the action herein.

- F** [25] On the payments made to Koo, it was asserted by the plaintiff that Koo acknowledged receipt of the payments made to him and that the defendant did not dispute the same. And, in any event, the cheques made as payments to Koo were in fact cleared as evidenced by the bank statements adduced (B pp 278–301) by the plaintiff and verified by PW2.

- G** [26] On the payments to Tenaga Danawa, evidence was led by the plaintiff to show that a sum of RM969,025 was paid via cheques issued by or on behalf of the plaintiff. The details of the cheques are as follows:

	No	Date	Particulars	Amount (RM)
H	(i)	11 May 2004	HSBC 445349	242,341
	(ii)	13 August 2004	HSBC 526227	242,000
	(ii)	20 June 2005	HSBC 662183	242,341
	(iv)	25 August 2005	HSBC 680215	108,862
	(v)	25 August 2005	HSBC 680216	133,481

- I** [27] TD's payment vouchers (B pp 259–268) described such payments as, inter alia, instalment payments and 'cadangan bayaran ansuran' for the purchase of 190 acres of land. Tenaga Danawa acknowledged receipt of the said payments and this was not disputed by the defendant.

[28] When the Koo's payment vouchers and the TD's payment vouchers were added up, the amount came to about RM1,511,000 which was approximately half of the total consideration paid to Tenaga Danawa of RM3,082,561.10 as could be seen from the Forms 14A (Transfer Forms). Therefore, the plaintiff submitted these would corroborate the oral testimony of PW1 and PW2 on the existence of the oral agreement.

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[29] The court accepts that there were payments made to Koo. However attractive the above assertions by the plaintiff may be, but as pointed out by the defendant, there was no direct evidence led that connects the payments made to Koo to them being paid by the plaintiff to the defendant. In other words the payments by the plaintiff to Koo by itself does not drive the court to inexorably conclude that there was the oral agreement.

C

[30] In evaluating the plaintiff's assertions, the following assertions by the defendant were placed on the scales to be weighed:

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- (a) the absence of any written communication or official correspondence between the plaintiff and the defendant over the period of time from 2004 which was the year when the plaintiff claimed to have made the first payment to the year when this suit was filed in 2019;
- (b) the only document issued to the plaintiff by the defendant in regard to the said lands is the letter from M/s V Selva, the solicitors for the defendant and dated 13 January 2004 (B pp 12–129) wherein the solicitors acknowledged receipt of the payment of a sum of RM200,000 and called upon the plaintiff to forward a draft sale and purchase agreement for the said lands on or before 19 January 2004, failing which the defendant would be at liberty to deal with other prospective purchasers without reference to the plaintiff. No draft sale and purchase agreement came;
- (c) this letter from M/s V Selva did not talk about the plaintiff buying half share in the said lands but rather 'to buy over and to develop' the whole of the said lands;
- (d) during the cross-examination of PW1, the latter admitted that the plaintiff could have written formally to the defendant if they had wanted any sort of business relationship since both parties are developers but this was not done;
- (e) PW1 was a seasoned and meticulous businessman cum developer;
- (f) PW1 instructed solicitors to prepare a draft agreement ('draft agreement') to have one of his companies buy over Koo's shares in the defendant and

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- A** Kuala Jati in 2005 in trying to acquire an interest in the said lands and although this transaction did not materialise, it was clear that he was able to instruct solicitors in his dealings;
- B** (g) it, therefore, defies commercial logic that PW1 did not even make any attempt to have a draft agreement or written documentation to confirm that the payments which the plaintiff made through PW1, PW2 and Semangat Sehati Sdn Bhd. which is a company wholly owned by PW1 and his wife, PW2 to Koo and Tenaga Danawa were meant for the plaintiff to have half share in the said lands although PW1 also admitted that he/the plaintiff could have given such instructions to their solicitors;
- C** (h) PW1's reason for not having such draft/written documentation namely that Chinese businessmen work on 'trust' was unacceptable when the draft agreement involved the same parties who were Chinese as well;
- D** (i) all the payments allegedly made to the defendant, save for two, were made by PW1, PW2 and Semangat Sehati to Koo personally as can be seen in Koo's payment vouchers with two other payments made to Chan Yau Fook;
- E** (j) there is no evidence of any receipt for those payments made to Koo and Chan Yau Fook having been issued by the defendant or Ong Seng Tee, the other director of the defendant;
- F** (k) under cross-examination, PW1 admitted that he knew that Koo was in financial difficulties and he needed money to invest in the defendant company to contribute toward the acquisition of the said lands, and he also owed money to Ong Seng Tee; and
- G** (l) PW1 also knew that Koo being a 50% shareholder to the defendant company would have to financially contribute equally towards the acquisition of the said lands, just as Ong Seng Tee being the other 50% shareholder would have to.

H [31] Although, the defendant tried to make much about the payments having not come solely from the plaintiff itself but through PW1, PW2 and Semangat Hati Sdn Bhd, I find this point to be unmeritorious. It is a fundamental principle that unless it appears from the nature of the case that any contract should be performed by the promisor himself, the promisor or his representatives may employ another to perform it and in the purchase of property both moveable and immovable it is common for a purchaser to effect payment of money through a competent third party such as a bank or a third party, see s 41 of the Contracts Act 1950 (Revised 1974) Act 136 and in particular illustration (a) therein which expressly provide the following illustration, both of which are reproduced below:

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41. If it appears from the nature of the case that it was the intention of the parties to

any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

A

Illustration

(a) 'A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by calling it to be paid to B by another'

B

[32] However, there is the glaring lack of any documentary evidence when one would expect that in the common course of business involving the buying and selling of lands and in particular by developers as in this case, there ought to be some documents to document the transaction of the intended purchase of the half share in the said lands at half of the acquisition price which is not an insubstantial amount of money, see s 114(f) of the Evidence Act 1950.

C

[33] And, from the evidence that was led, the following facts were laid down; the plaintiff is a developer, PW1 is an experienced businessman careful to document each and every payment made to Koo and, none of the Koo payment vouchers state that the payments were received by the defendant.

D

[34] Although during the trial PW1 did testify that he had met Ong Seng Tee, the other director of the defendant, there was no evidence led on what Ong Seng Tee knew of the communications made between the PW1 and Koo.

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[35] The plaintiff accepted at face value two letters (B pp 270–271) produced by the defendant that Ong Seng Tee was medically unfit to testify. No challenge was made at the time of the introduction of the letter from the doctor said to be treating Ong Seng Tee. I was initially troubled by his non-attendance and had sought further written submissions and which were duly tendered (encls 94 and 98) by learned counsel for the plaintiff and the defendant and after having given them careful consideration, I came to the conclusion that by reason of his medical condition which was accepted by the plaintiff during the trial (see notes of proceedings pp 170–177), no adverse inference ought to be drawn against the defendant.

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[36] With Koo having passed on, a red flag was well raised about not accepting what is attributed to have been represented by a deceased person and that the Court ought to scrutinise the evidence very carefully to see whether a false claim has been brought against a person who is dead, see *Mohammad Khair bin Hormat & Anor v Lakshmanan Krishnan* [2011] 5 MLJ 607 (CA) and *Evidence and The Litigation Process by Jeffery Prinsler* (3rd Ed) at p 470.

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[37] This led to the omission which weighed heavily on my mind namely that as Koo passed away on 27 April 2009, surely PW1 who was in

A communications with Koo on the purchase of half share in the said lands would be aware of Koo's demise and would be concerned and would wish to contact the defendant's representative namely its director, Ong Seng Tee whom PW1 testified had been introduced to him by Koo.

B [38] Yet, save for an unsuccessful attempt via a letter dated 10 May 2011 to get Tenaga Danawa to confirm receipt of its payments (B p 211), from the time of the death of Koo in 2009 until this action was filed in 2019, with there being a lapse of ten years, there was no evidence at all to show that the plaintiff had tried to communicate with the defendant on the fate of its payments to Koo, see *Wong Hon Leong David v Noorazman bin Adnan* [1995] 3 MLJ 283 at p 188; [1995] 4 CLJ 155 at p 159 (CA), *Eastern & Oriental Hotel (1951) Sdn Bhd v Ellarious George Fernandez & Anor* [1989] 1 MLJ 35 at pp36–37; [1988] 1 CLJ Rep 50 at p 52, *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229 at p 234; [1979] 1 LNS 119 (FC); and *Tan Sri Abdul Khalid bin Ibrahim v Bank Islam Malaysia Bhd and another suit* [2009] 6 MLJ 416; [2010] 4 CLJ 388 at p 390 (CA).

E [39] The situation here is unlike the factual matrix that obtain in the two cases relied upon by the plaintiff namely that of *Al-Faiha for Engineering Products v Ranhill Bhd* [2019] 9 MLJ 553 (HC) where the defendant admitted the existence of a meeting between representatives of both parties in mid-2015 where an oral agreement was made and in our case, the defendant had expressly denied that Koo was acting for the defendant and *Abda Airfreight Sdn Bhd v Sistem Penerbangan Malaysia Bhd* [2001] 3 MLJ 641 (HC) where the contract was held to be void for illegality.

G [40] I will address the payments made to Tenaga Danawa shortly. However, before that, I find that the plaintiff has failed to discharge its legal burden to prove on a balance of probability that the payments made to Koo were for meant for the defendant and in fact had been utilised towards the acquisition price of the said lands and in consequence, that the plaintiff had failed to prove there was such an oral agreement to this extent, see *Nyo Nyo Aye v Kevin Sathiseelan a/l Ramakrishnan & Anor* [2020] 4 MLJ 380 at p 398; [2020] 5 CLJ 82 at p 98 (CA).

Contribution by the plaintiff towards the acquisition price

I [41] The finding that there was no oral agreement on the terms as claimed by the plaintiff however, does not put an end to the plaintiff's case. There is still the payments made to Tenaga Danawa who had transferred the said lands to the defendant via the six Transfer Forms 14A (B pp 51–80).

[42] The court finds that the plaintiff had paid the sum of RM969,025 to

Tenaga Danawa and a further sum of RM200,000 to the solicitors for the defendant, M/s V Selva who admitted via their letter dated 13 January 2004 (B pp 128–129) that the RM200,000 was a deposit towards the acquisition of the said lands for development. These two payments came to RM1,169,025.

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[43] There was no evidence led that the RM200,000 paid to M/s V Selva who by their letter admitted that they were acting for the defendant was ever repaid to the plaintiff.

B

[44] The TD payment vouchers clearly show that the payments were made towards the acquisition of the said lands. Clear and incontrovertible evidence in the form of the five HSBC cheques caused to be issued by the plaintiff and the relevant bank statements show these cheques were all cleared for payment. DW1 during his cross-examination (NOP pp 227–230) sought to deny the clear documentary evidence of payments made and I find his credibility to be wanting.

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D

[45] PW1 and PW2 were categorical in their testimony that these payments were towards the acquisition of the said lands by the plaintiff. They did not mean to be charitable.

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[46] DW1, a director of defendant was called to testify. However, he did not give any evidence to explain why the plaintiff made the payments in the TD payment vouchers and more importantly, why the defendant should benefit from the same together with the aforesaid deposit of RM200,000. In fact, no evidence was led by the defendant that this total sum of RM1,169,025. or any part thereof was ever repaid to the plaintiff or accounted for. In fact, DW1 did not prove to be a helpful witness. He was careful to give answers which to his mind would not prejudice the interest of the defendant. Besides the finding I had made on his answers on the issue of payments to Tenaga Danawa, other clear examples are he disagreeing with the contents of what the letter of 13 January 2004 clearly says (NOP pp 214–216) and that the payments made by HSBC cheques could not possibly be by the defendant or Kuala Jati even though these two companies do not have a HSBC account (NOP p230). However, he agreed that there was no evidence before the Court as to how the defendant and Kuala Jati paid for the said lands (NOP p 212). In this regard, I find that the submissions by the defendant (encl 83 p 26 para f) with the receipts being issued in the name of the defendant and/or Kuala Jati, the payments had come from the defendant and/or Kuala Jati to be wholly self-serving and without merit because the documentary evidence led by the plaintiff in the form of the HSBC cheques and the statement of accounts produced by the plaintiff clearly show that it was the plaintiff who effected these payments. And, it lay upon the defendant to lead evidence to rebut this evidence but which it did not. In this regard, I agree with the submissions by

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A the plaintiff, if at all Tenaga Danawa was required to be called to prove that the payments were in fact made by the defendant, the burden lay upon the defendant to do so, see s 103 of the Evidence Act 1950 and *Juahir bin Sadikon v Perbadanan Kemajuan Ekonomi Negeri Johor* [1996] 3 MLJ 627 at p 635 CA.

B [47] It would be useful at this juncture to set out hereunder an excerpt from *Halsbury's Laws of Malaysia* Vol 5 on Trusts at para [90.023] on 'Resulting and constructive trusts':

C Resulting trusts and constructive trusts arise, or are implied, by operation of law, and may or may not reflect the intention of the persons concerned, whereas express trusts arise from the intention of the disposer ascertained from the formal or informal words used by him.

D ... A presumed resulting trust arises from the application of a rebuttable presumption of intention that property purchased wholly or partly by X but vested in Y's name should be held by Y on trust for X to the extent of X's share in the purchase. (Emphasis added.)

E [48] Whilst I have found that the plaintiff was not able to prove that the payments caused to be made by the plaintiff to Koo personally were for the benefit of the defendant, this finding does not apply to the payment of RM1,169,025 as the defendant had clearly benefited therefrom with evidence unerringly pointing to the money being meant for the acquisition of the said lands.

F [49] Against such evidence, the evidential burden shifted to the defendant to prove that these payments were not made by the plaintiff towards the acquisition of the said lands or that the payments were not meant to be for the benefit of the plaintiff for the purchase of the said lands. On the shifting of burden of proof, the law is clearly explained in the recent Federal Court authority of *Rosliza bt Ibrahim v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 181; [2021] 3 CLJ 301 and see also *Hong Yik Trading v Liziz Plantation Sdn Bhd* [2017] 5 MLJ 398 at pp 406–407; [2017] 8 CLJ 491 at pp 497–498 (FC) and *Re B (children)* [2008] 4 All ER 1 (HL) where Lord Hoffman said:

H [2] If a legal rule requires a fact to be proved ('a fact in issue'), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule, that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.

I [50] In this case, no such evidence was led by the defendant to discharge the evidential burden which has shifted to it so as to rebut the rebuttable

presumption that arose driving the court inexorably to the conclusion that the defendant had benefitted therefrom in its acquisition of the said lands from Tenaga Danawa.

[51] With the plaintiff not intending to make the payment of RM1,169,025 gratuitously or as a gift, see *Takako Sakao (f) v Ng Pek Yuen (f) & Anor* [2009] 6 MLJ 751; [2010] 1 CLJ 381 (FC) and *Quah Ooi Keat & Anor v Yew Phaik Hoon* [1966] 2 MLJ 208 (FC), I find that the plaintiff has an interest in the said lands. And, sitting as a Court of Equity, where the court may mould the relief that is to be granted premised upon the particular facts of the case, see *Sinar Wang Sdn Bhd v Ng Kee Seng* [2005] 2 MLJ 42 (CA), I hold that there is a resulting trust in favour of the plaintiff to the extent of RM1,169,025 out of the acquisition price of RM3,230,000 which works out to be 32.3% undivided share in the said lands. The defendant's reliance upon the case of *Lai Hee Sang v Pun Hai Chin* [2016] 6 MLJ 434 (CA) for the principle that an action for specific performance is clearly inconsistent with a claim for a declaration for trust is with all due respect, misplaced. In *Lai Hee Sang* the Court of Appeal agreed with the findings of the High Court that with the State Authority having rejected the approval sought by the respondent for the transfer of the property, specific performance of the transfer of the property could not be granted and by reason thereto no trust over the property could be created. There is no such restriction in this case. Further, *Lai Hee Sang* relied upon the case of *Teo Ah Bin @ Teo Eng Bin v Tan Kheng Guan* [2002] 3 MLJ 121 (HC) where the High Court found that there could not be a trust because the underlying transaction was a loan with the High Court therein quoting from Underhill & Hayton in the *Law Relating to Trustees* (14th Ed) at p 190 which states:

If payment is made at the request of and by way of loan to a person in whose name the property vested, there will be no resulting trust, because in such circumstances the lender did not advance the purchase money as purchaser but merely as a loan.

[52] The High Court in *Teo Ah Bin @ Teo Eng Bin* went on further to quote from *Equity & the Law of Trust* (7th Ed) at p 129 where the learned author commented:

Evidence must also show that the money was intended to be advanced by the person alleging the resulting trust in the character of purchaser: *if the evidence merely established a loan of some or all the money used for the purchase there will be no resulting trust and the person lending the money would be a mere creditor.* (Emphasis added.)

[53] The evidence led in this case did not establish a loan but instead that of the plaintiff seeking to purchase the said lands and had contributed towards the acquisition price for this purpose. It is unfortunate for the plaintiff that insufficient evidence has been led to establish the oral agreement on a balance

A of probability as I have so found but notwithstanding that, it has led sufficient evidence to prove by reason of the payments it had made to Tenaga Danawa and the RM200,000 paid to the defendant's solicitors, a resulting trust to the extent of such contribution arises.

B *Limitation and laches*

[54] The defendant pleaded limitation and laches to seek to defeat the plaintiff's claim.

C [55] The said lands were only transferred to the defendant in December 2017 and upon initiating the suit the plaintiff had applied for and obtained an interim injunction on 17 January 2019 to restrain the defendant from selling, charging and or disposing the said lands until the trial of the action and or further order of the court.

D [56] Even if it can be said that limitation would have accrued since the last payment to Tenaga Danawa being on 25 August 2005 (B p 269) that a period of some 14 years had passed before the action was filed but with the court having held that there is a resulting trust to the extent of 32.3% of the said lands in favour of the plaintiff, the recovery of such trust property from the defendant trustee would not be caught by limitation pursuant to s 22(1)(b) of the Limitation Act 1953 (Revised 1981) which is reproduced below:

F (1) *No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —*

- (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
- G (b) *to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use. (Emphasis added.)*

H See also *Tan Hwa Ling @ Tan Siew Leng & Ors v Tan Keng Yong @ Tan Keng Hong & Anor* [2020] 10 MLJ 651; [2020] 1 LNS 296 (HC) at paras [66]–[69].

I [57] As for the defence of laches, no evidence was led by the defendant as to how it would be prejudiced. No evidence was led to show that the plaintiff had acquiesced to the defendant's denial of its claim, that its position had changed or that any third party interest has been affected, see *Tan Hwa Ling @ Tan Siew Leng & Ors v Tan Keng Yong @ Tan Keng Hong & Anor* and *Leo Leslie Armstrong (as the President and Committee of The Young Men's Christian Association of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (previously held by Majlis*

Mesyuarat Kerajaan Negeri Selangor) [2015] 1 MLJ 255; [2015] 2 CLJ 10 (CA) at para [53].

A

CONCLUSION

[58] Wherefore the court makes a declaration that: (i) there is a resulting trust of the said lands held by the defendant in favour of the plaintiff to the extent of 32.3% undivided share; (ii) that the defendant is to transfer 32.3% of the said lands in favour of the plaintiff; (iii) with the parties being at liberty to apply to work out the mechanics to have this interest to be transferred in favour of the plaintiff; and (iv) with the plaintiff succeeding substantially in this action (ie about 65% of its claim), costs was be awarded to the plaintiff subject to a discount of 35% and after hearing learned counsel, the court awarded costs of RM50,000 subject to allocatur to be paid by the defendant to the plaintiff.

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[59] The court thanks learned counsel for both the plaintiff and the defendant for the submissions presented and the numerous cases referred to which made it easier for the court to arrive at the decision made and no discourtesy is meant for not mentioning each and every case they have cited.

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Plaintiff's claim allowed in part with costs.

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Reported by Mohd Kamarul Anwar

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